

P-5
IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF UTAH, IN AND FOR UTAH COUNTY.
CASE NO. 28887.

*****: ANSWER
Provo Reservoir Company, : Counterclaim and Cross Complaint
a corporation, : of
Plaintiff, :
VS : Springdell Resort Company,
Provo City, et al, :
Defendants. : a corporation.
*****:

Now comes the said defendant, Springdell Resort Company, a corporation, and by stipulation of counsel and by leave of court, first had and obtained, answers the complaint of the plaintiff herein, and admits, denies and alleges as follows:

1. This defendant admits the allegations in complaint of plaintiff contained in paragraph Nos. 1 to 27, both inclusive, and paragraph No. 37.

2. That this defendant has no knowledge, information or belief sufficient to enable it to answer any or either of the allegations in paragraph 28, 29, 29 (A), 29 (B), 29 (C), 29 (D), 29 (E), 30, 31, 32, 33, 38 and 39 in plaintiff's complaint and therefore it denies each and every allegation of the same.

Further answering the complaint of the plaintiff and by way of counterclaim against the plaintiff and for cross complaint against each and all of the defendants, this defendant alleges and shows the court.

1. This defendant adopts and alleges as a part of its counterclaim against the plaintiff and cross complaint as to each and all of the defendants, each and every allegation contained within paragraphs Nos. 1 to 26, both inclusive, of plaintiff's complaint herein, the same as if here set forth in full.

2. That this defendant is a corporation duly organized, created and existing under the laws of the State of Utah, and by its charter and by full compliance with the laws of the State of Utah, is authorized and empowered to engage in the business of operating a public and private pleasure resort;

To purchase, lease, or otherwise acquire land and water rights in the State of Utah; to sell or otherwise dispose of land or water or water rights and from time to time sell, lease or otherwise dispose of all or any part of the properties belonging to it, as may seem to be for its best advantage and best interests of its members and stockholders.

3. That in pursuance of its said powers and authority it has acquired and is now the owner of a public and private pleasure resort on Provo River, in Provo Canyon, County and State of Utah, consisting of approximately one hundred acres of land, and has at great expense improved the same for the purpose of maintaining on said lands summer homes for its members and stockholders and for the entertainment of the general public.

4. That in or about the year, A. D. 1880, the predecessors in interest of this defendant, entered upon the lands now comprising said pleasure resort and discovered thereon a certain spring of water, and they then appropriated the waters of said spring and diverted and used the same upon the said lands of the irrigation thereof, and applied all the water flowing from said spring for said purpose and for domestic use.

And that thereafter the predecessors in interest of this defendant developed said spring and increased the flow thereof, during the year 1901, and that since the water of said spring was so appropriated and developed as aforesaid, the predecessors in interest of this defendant, ^{and this defendant} have continuously used the water thereof for the irrigation of about twenty-five acres of said land comprising the pleasure resort aforesaid of

this defendant and that this defendant now and ever since the appropriation and development of said spring as aforesaid, has continued to use the water thereof and this defendant now uses said water for the beneficial purposes of irrigating the said land and supplying its stockholders with water for domestic use.

5. That in making said appropriation of the water of said spring as aforesaid, this defendant and its predecessors in interest fully complied with all the requirements of the laws of the State of Utah and have ever since continuously used and now use said water, thus appropriated for the beneficial purposes aforesaid economically and without waste.

6. This defendant further alleges that its right of ownership, title and use of the waters of said spring and the sources thereof as herein alleged, was fixed, settled and confirmed by decree of the District Court of the Fourth Judicial District of the State of Utah, in and for Utah County, made and entered on the 26th day of January, 1907, in that certain cause wherein Provo City, a municipal corporation, et al, were plaintiffs and the Telluride Power & Transmission Company, et al, were defendants, and that by said decree the predecessors in interest of this defendant were adjudged and decreed to be entitled to the use of 60' feet of the waters of Provo River from Springdell Springs, if the said springs flow that amount of water, but no more water than said springs flow;

That said 60' feet of water shall not be used at any other place than on the lands aforesaid, comprising a portion of said pleasure resort of this defendant for culinary and domestic purposes.

7. That said springs arise wholly upon the land of this defendant comprising said pleasure resort, and that since the entering of said decree as aforesaid, the stockholders and members of this corporation have placed thereon at great

expense, towit: at a cost of approximately \$20,000.00, cottages and dwelling houses for summer homes, and that this defendant has expended large sums of money in beautifying the grounds so as to place them in a condition to be desirable for summer homes for its stockholders and members, and for general resort and amusement purposes; that the use of said water by this defendant and its stockholders, has been for beautifying said ground and for supplying its stockholders and the general public with water for domestic supply and use. Said use has been economically and absolutely necessary for the purposes aforesaid, and at times during certain seasons of the year has consumed all the flow of said spring, not exceeding 60' feet awarded by said decree as aforesaid, and that all water flowing from said spring not used by this defendant and the stockholders, as aforesaid, has been permitted to flow across the lands of this defendant and into the natural channel of said Provo River and from thence diverted by the other defendants in this action for beneficial purposes.

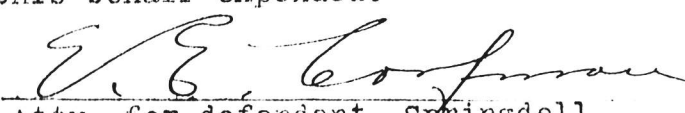
8. That the said lands comprising the resort of this defendant without the use of said water, would be rendered wholly barren and unfit for any useful purpose, and by the use of said water as aforesaid, the same rendered habitable and very valuable for a public and private pleasure resort during spring, summer and fall months, and that said resort could not be maintained with-^{out} the use use of said water for domestic purposes as aforesaid.

9. That the plaintiff and each of the other defendants herein as this defendant is enformed and believes, and therefore alleges the fact to be assert and set up some claim or interest adverse to the ownership, right, title and interest of this defendant to the use of the waters of said spring and its sources of supply as claimed by this defendant herein, but this defendant has not sufficient knowledge or information to enable it to set forth herein specifically the character or nature of said claim or any of them.

10. This defendant further alleges that the several assertions, claims and interest of the plaintiff and of each and all of the other defendants, are wrongful, without right and unfounded in fact or law, and are a cloud upon this defendants title and rights to the use, possession, ownership and enjoyment to the water of said spring.

Wherefore, this defendant prays judgment that the plaintiff and each of the other defendants herein, may be required to set forth any and every adverse claim, interest or demand by them and each of them in or to the water of said spring, so claimed by this defendant to the fact that their several adverse claims, pretensions and demands, may be adjudicated and declared null and void as against this defendant, and that the title, ownership and interests therein of this defendant in and to said waters, so claimed by it as herein set forth, may be quieted and confirmed as against the plaintiff and each of the other defendants herein to the interest, title, and ownership of this defendant therein as herein set forth, may be adjudicated to be good and valid.

This defendant prays for such other and further relief in the premises as to the court may seem just and equitable and for its costs in this behalf expended.


Atty. for defendant, Springdell
Resort Company, a corporation.

State of Utah:
: SS
County of Utah:

Jesse Knight having been first
duly sworn on oath says: I am an officer of the Spring-
dell Resort Company a corporation defendant herein, to
wit: the president thereof; that I have
read the above and foregoing answer counterclaim and
cross complaint and know the contents thereof; that the
same are true of my own knowledge except as to the mat-
ters there-in stated on information and belief, and as
to those matters I believe it to be true.

Jesse Knight

Subscribed and sworn to before me the 14
day of August, A. D. 1914.

E. Jensen
Notary Public.



commission expires April 13, 1915.

*Doc Sevier admitted this 23rd day
of October A.D. 1914*

*Just Evans,
on behalf of Plaintiff*

2888

Counterclaim

Springdell

Resort Company

IN DIST. COURT
UTAH CO., UTAH.

FILED *

OCT 26 1914

as Robinson Clerk.

as Robinson Deputy.